#

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3957 OF 2006

Rajendra Kumar @ Raju Maganlal Mandvia .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Subhash Jha i/b. Law Global for applicant
Mr.S.S.Pednekar for State
Mr.S.Kadam for original complainant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 10th November 2006

P.C.

. This criminal application is preferred by the applicant who has been arrested in connection with M.E.C.R.No.15 of 1998 by the Economic Offences Wing (EOW), G.B.C.B., C.I.D., Mumbai.

2. Offences alleged are punishable under sections 406, 407, 419, 420, 465, 467, 468 and 120B read with 34 of I.P.C.

3. Applicant has been arrested on 22nd October 2006 and since 30th October 2006 he is in judicial custody.

4. He presented an application for bail which has been rejected by learned Additional Sessions Judge on 2nd November 2006.

5. Mr.Jha, learned Counsel appearing for applicant submits that the complaint which was filed by the original complainant, who is now seeking to intervene before me, suppresses the fact of a civil suit being filed, interlocutory proceedings therein and orders passed on the same. He submits that the civil suit is filed on the Original Side of this Court and being unsuccessful in obtaining any relief in his favour in the said suit, complainant has chosen to take recourse to the criminal proceedings.

6. Mr.Jha has made a serious grievance that

when the learned Magistrate has directed the police to investigate and report, the investigating machinery ought to have taken permission of the Court before effecting arrest of the applicant. More so, when the dealings between the parties are as old as of 1996. Merely because, the applicant has been arrested recently, does not justify by-passing this procedure.

7. He submits that it is false to contend that the applicant was not available and absconding for all these years. The applicant has a passport and has travelled abroad in connection with business dealings and after obtaining Visa and clearances from the appropriate authorities. For all these years, there was no attempt to apprehend and arrest the applicant. In such circumstances and when the applicant has also pointed out that he is ailing, the applicant’s application should have been considered sympathetically. There is no

apprehension that the applicant would not be available for trial or for any interrogation. He submits that appropriate conditions be imposed on the applicant and he be enlarged on bail.

8. Learned A.P.P. after taking instructions states that the absconding co-accused Manoj Parekh is also arrested and therefore, the application be rejected as it is necessary to investigate and interrogate the matter thoroughly. Interrogation would proceed in the right direction once both accused are now available.

9. Mr.Kadam learned Counsel appearing for original complainant has sought to invite my attention to several documents which would demonstrate that a criminal offence is made out and it is immaterial whether the fact of filing civil suit is brought to the notice of this Court or not. These are two distinct things and just because civil proceedings are pending, does not

mean that recourse to criminal law is impermissible and at all time.

10. From a perusal of the order passed by the trial court it is clear that arrest is effected in connection with dealings between parties which are as old as of 1996- 1998. Proceedings between parties, civil and criminal, have been pending since then. Arrest is effected in 2006 but ultimately all that is placed on record is the alleged apprehension that the applicant, if released on bail, may influence witnesses, tamper with them as also hamper the investigation. More so, because of his business dealings, he is likely to go abroad frequently and my attention is invited to paras 11 and 12 of the Sessions Court’s order.

11. Having perused the application and annexures thereto, so also the order of the learned Sessions Judge and also in the light of the clarification of Mr.Jha that the applicant’s

wife is now permanently residing in India, it would be appropriate to consider the application in the backdrop of these circumstances. In my view, the case is based upon a transaction, whereby scrap materials were sought to be imported. There are documents which are forming part of the record of a civil suit so also some of them are in custody of investigating machinery. Co-accused being arrested, does not mean that applicant does not deserve to be enlarged on bail. More so, when the only apprehension expressed is about his non-availability at the time of trial. That can be taken care of by imposing appropriate conditions. Mr.Jha states that the applicant has already surrendered his passport to the I.O. and without seeking prior permission of the trial court, he will not leave India.

12. Additionally, he will attend E.O.W., G.B.C.B., C.I.D., Mumbai once a week initially for a period of three months and thereafter as

and when summoned. Hence, following order:-

i) The applicant arrested in connection with M.E.C.R.C.R.15 of 1998 registered with Economic Offences Wing, G.B.C.B., C.I.D., Mumbai shall be enlarged on bail in the sum of Rs.50,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer E.O.W., G.B.C.B., C.I.D., Mumbai on every Friday between 5.00 p.m. and 7.00 p.m. initially for a period of three months and thereafter as and when summoned, conclusion of the trial. Applicant shall not leave India without prior permission of trial court.

iii) The order of bail will be given

effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of

bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

13. It is clarified that this order shall not influence the trial court while deciding the main matter. Needless to state that the observations made herein are all tentative and prima facie and they shall not influence the Court while deciding the application preferred, if any, for enlarging the co-accused Manoj Parekh on bail.

(S.C.DHARMADHIKARI, J)